IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION.

CIVIL APPLICATION NO.2729 OF 2005.

IN

FIRST APPEAL NO.157 OF 2001.

Mirza Matiullah Baig : Applicant.

versus

The Bombay City Weavers Co.op Society Ltd. : Respondent.

Mr.Vijay Kantharia with J.B.Mishra for the applicant.

Mr.R.A.Thorat for the respondent.

CORAM : D.G.DESHPANDE,J.

DATED : 21st June 2005.

ORAL ORDER

1. Heard advocates for the applicant/appellant and the respondent. A decree for possession is passed against the appellant

along with an order to hold an enquiry. The appellant filed the appeal. Obtained a stay. There was no stay of further enquiry regarding mense profits. Accordingly mense profits enquiry was held by the Registrar, City Civil Court, Bombay and the order has been passed. Now it is an attempt by the appellant to avoid to deposit the amount of the mense profits. The advocate for the appellant relied upon the judgment of the Supreme Court reported in **AIR 1980 SC 2080 [Assistant Custodian General of Evacuee Property and another v. Lila Devi and anr.]** wherein the Supreme Court has observed ;

> "The sum decreed as mense profits is payable to the decree holder only if the full amount of court fee is paid by him. The decree itself embodies that stipulation. The obligation on the part of the judgment debtor to pay mense profits accrues only on the satisfaction of that condition"

This judgment does not apply to the facts of the present case. If the mense profits have been determined, the appellant may not pay the same to

the respondent, but he has to deposit the mense profits in the Court. Therefore, there is no merits in this application. It is dismissed. Certified copy expedited.

[D.G.DESHPANDE]

21/06/2005 JUDGE.